



**Homeland
Security**

Privacy Office, Mail Stop 0655

October 22, 2013

SENT VIA EMAIL TO: 6895-91396844@REQUESTS.MUCKROCK.COM

Zack Sampson
MuckRock

Re: 2014-HQFO-00009

Dear Mr. Sampson:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated October 01, 2013, and to your request for a waiver of all assessable FOIA fees. Specifically, you requested documents related to the operations of federal websites during the government shutdown. Specifically: (1) Memos and shutdown plans addressing the operation of this agency's websites during a government shutdown; (2) Any cost-benefit analyses related to the operation of this agency's website during a government shutdown; (3) Any security analyses related to the operation of this agency's website during a government shutdown; (4) Annual budget documents showing the costs of operating this agency's website. Due to the October 1 - 16, 2013, lapse in appropriations leading to the closure of the government, this office received your request on October 17, 2013.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances. As your request seeks documents that will require a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

After thoroughly reviewing your letter and request for fee waiver and media status, I have determined that you have not presented a convincing argument that MuckRock is entitled to a blanket waiver of applicable fees.

The DHS FOIA Regulations at 6 CFR § 5.11(k)(2) set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met. We will consider these factors in our evaluation of your request for a fee waiver:

- (1) Whether the subject of the requested records concerns “the operations or activities of the government”;
- (2) Whether the disclosure is “likely to contribute” to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;
- (4) Whether the contribution to public understanding of government operations or activities will be “significant”;
- (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

As a requester, you bear the burden under FOIA of showing that the fee waiver requirements have been met. Based on my review of your October 1, 2013, letter and for the reasons stated herein, I have determined that your fee waiver request is deficient. As the records in question pertain to actual or alleged government activity and the disclosure is likely to contribute to an understanding of government operations or activities, your request meets the first and second factor. I determined that factors three through six have not been met. Since your request for a fee waiver has failed to satisfy each of the required factors, I am denying your fee waiver request.

Additionally, your request for designation as a “representative of the news media,” your request is denied. DHS FOIA regulations specifically define “representative of the news media” as “any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.” 6 C.F.R. § 5.11(b)(6). Based on the information contained in your letter, I am denying your request for this fee status because you have not presented a convincing argument that Muckrock is an entity organized and operated to publish or broadcast news to the public.

Although your request for “representative of the news media” status is denied, you are entitled to two hours of search time and 100 pages of releasable records free of any charges. 6 C.F.R. § 5.11(d)(3). Should search time exceed two hours and duplication costs exceed 100 pages, we will charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requestors. However, we are holding your fee waiver request in abeyance pending the review and quantification of responsive records.

You have the right to appeal the determination to deny your fee waiver request. Should you wish to do so, you must **send your appeal within 60 days of the date of this letter** to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Mailstop 0655, Washington, D.C. 20528, following the procedures outlined in 6 C.F.R. § 5.9. Your envelope and letter should be marked “Freedom of Information Act Appeal.” Copies of FOIA and the Department’s FOIA regulations are available at www.DHS.gov/FOIA.

We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2014-HQFO-00009**. Please refer to this identifier in any future correspondence. If you have any questions, or would like to discuss this matter, please feel free to contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,

A handwritten signature in black ink, reading "Lashawn Schmidt". The signature is written in a cursive, flowing style.

Lashawn Schmidt
FOIA Program Specialist